UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CONF.157/PC/92/Add.4
1 May 1993

Original: ENGLISH

WORLD CONFERENCE ON HUMAN RIGHTS
Preparatory Committee
Fourth session
Geneva, 19 April-7 May 1993
Agenda item 6

REPORT ON OTHER MEETINGS AND ACTIVITIES

Note by the Secretariat

Addendum

Contribution by the National Commission for Human Rights (Mexico)

1. The attention of the Preparatory Committee is drawn to the attached document prepared by the National Commission for Human Rights (Mexico), entitled "Nearlt Three Years of Experience".

2. The document was prepared as a background paper for the United Nations meeting of representatives of national institutions and organizations promoting tolerance and racial harmony and combating racism and racial discrimination (Sydney, Australia, 19-23 April 1993) organized by the Centre for Human Rights in cooperation with the Australian Human Rights and Equal Opportunity Commission.

GE.93-13847

SUMMARY

1.— Antecedents and creation of the National Commission for Human Rights (CNDH in Spanish). 2.— The CNDH takes on the role of OMBUDSMAN. 3.— The change in the CNDH's legal frame-work. 4.— Structure and functions of the CNDH. 5.— The CNDH's achievements and challenges.

1.— Antecedents and creation of the CNDH.

Ever since the beginning of the present Administration, it was obvious that Mexico needed to make progress in broadening and perfecting its juridical instruments so as to achieve a better defense and protection of Human Rights.

The governments's immediate response was to set up the Directorate General for Human Rights as part of the Ministry of the Interior. This new office would be in charge of attending to citizens complaints about violations of Human Rights and their basic guarantees and prerogatives. Thus, it was the closest antecedent to the National Commission for Human Rights.

Prior to that, at the local and municipal level, similar efforts had been made in some parts of the country, although in general they had no great radius of action, nor any really far—reaching effects on Mexican life. Such was the case of the Directorate for the Defense of Human Rights in Nuevo Leon (1979); the Office of the District Attorney for the Municipality of Colima (1983); The Office of the Attorney General for the Defense of Indians in Oaxaca (1986) and its counterpart in the State of Guerrero (1987).

Note: The opinions expressed in this paper are those of the authors.

Much more effective was the creation of the Office for the Defense of University Rights at the National Autonomous University of Mexico (1985) and the Office of the Attorney for the Protection of Citizens in Aguascalientes (1988), institutions which, moreover, had the great merit of opening up the way for the figure of the OMBUDSMAN outside purely academic circles.

In spite of these efforts, there was no substantial improvement in the country with regard to more effective respect for Basic Rights. The chronic spur to the problem became increasingly acute because of abuses committed in the struggle against drug—trakficking; there was a public outcry demanding that the State take rapid and vigorous action to put an end to this situation and reverse this pernicious trend.

Following the principles of full respect for basic guarantees; the decision to undertake an open and frontal attack on impunity, recognition that no one should be above the Law, and with the State honestly accepting that there were problems in enforcing Human Rights adequately, on the 5th of June 1990, the President issued a Decree creating the National Commission for Human Rights.

According to its terms, the National Commission was to be a decentralized agency of the Ministry of the Interior responsible for proposing and overseeing the implementation of national policy regarding the respect and defense of Human Rights. In order to carry out this task, it was authorized to instrument preventive mechanisms for, attend to, and coordinate efforts to safeguard, the Human Rights of Mexicans and foreigners within Mexican territory, the latter in coordination with the Ministry of Foreign Affairs. Very specifically, the CNDH was granted authorization to "draw up and carry out programs for attending to and following up complaints made by the public about Human Rights".

The National Commission was to be headed by a Chairman appointed by the President of the Republic, assisted by a Council made up of persons of recognized prestige from civil society, well—known in their sphere and capable of proposing instructions and guidelines for the institution's work.

With this juridical statute the National Commission started to work. As certainly happens whenever any Institution starts up, at the outset the CNDH's activities were far from simple. Criticism was the order of the day: there were some who considered that due to its decentralized nature the Commission would not have the independence required for really carrying out its responsibilities; others believed that the agency's sole mission would be to smarten up Mexico's image abroad, while still others thought it was but a fleeting fashion that would not last long.

However, large segments of civil society, encouraged by the prestige and independence of the person appointed as Chairman of the National Commission, gave their full support to the institution and generously granted it their vote of confidence which could be retracted, rectified or ratified if the facts should warrant it.

Confronted by this panorama of uncertainties, questionings, incredulities and expectations, the National Commission, on the basis of its daily work and its results, started to make a space for itself within the nation's legal circles.

2.— The CNDH takes on the role of OMBUDSMAN

The most urgent tasks confronting the National Commission, and which necessarily had to be carried out at once and at the same time, were those of starting to receive citizens complaints about violations of Human Rights and making the general measures contained in its founding Decree into a more complete and precise juridical instrument.

It was then that people began to talk more and more about having an OMBUDSMAN; an institution that was practically unknown not only to the common people in Mexico but also to the vast majority of the authorities and public servants. The general public was informed of its origins, its nature and its functions. In a great effort of dissemination, the similarities between the CNDH and this Swedish institution were analyzed, as were the differences between them and the role it might play in Mexican society.

Little by little the general public became convinced that the Mexican version of the OMBUDSMAN would not upset the country's juridical system, supplant any other agency or function, nor would it duplicate agencies, actions or procedures.

The CNDH's first recommendations started to penetrate into civil society thanks, among other things, to their dissemination by the mass media. Within a short time, the National Commission issued recommendations on some of the events that had outraged public opinion most, appealing for penal and administrative action against those responsible for violating Human Rights.

In various ways, the CNDH's recommendations had an impact on the country: many federal and local authorites, unaccustomed to this type of indication and public recommendations, although not necessarily coming out against the Commission's work, at least showed surprise and incredulity. Some even offered resistance. On the other hand, there was sufficient evidence that the CNDH as a semi—autonomous agency was only dependent administratively, while in its technical and functional dimension, the only truth was that stemming from the evidence confirmed in its files.

After intense working sessions by the Commission's Council, its Internal Rules and Regulations were approved and published in the Official Journal of the Federation on the 1st of August 1990, less than two months after the CNDH had begun its work.

The Internal Rules and Regulations stipulate that the National Commission is to function as an OMBUDSMAN, clearly defining its competence to receive complaints on alleged violations of Human Rights, investigate them and draw up recommendations in order to seek redress and punish those responsible for committing them.

It is competent to intervene in the following cases:

A) Violations, faulty procedures and crimes harming a person or group of people, committed by administrative authorities or public servants;

B) Violations, faulty procedures and crimes harming a person or group of people, committed by social agents, whose impunity stems from the reluctance or tolerance of an administrative authority or public servant;

C) In the cases referred to above, because of negligence imputable to some authority or public servant.

Complaints about matters of a jurisdictional, electoral or work—related nature, dealt with by OMBUDSMEN, are not included in the Commission's sphere of competence.

The procedure set up in the Internal Rules and Regulations for dealing with complaints was adapted to the procedures governing the OMBUDSMAN: easy access for complainants; absence of solemnity and formalism; obligation on the part of the authorities to provide reports; speedy presentation of proof; autonomous search for evidence; public recommendations or solution to the complaint by means of the mechanism of amiable settlement, conciliation or mediation.

The CNDH's actions were not limited to presenting the complaint, it also had authority to intervene officially. Likewise, as there was no institution for juridical assistance or legal aid in the country, the Internal Rules and Regulations stressed the CNDH's responsibility for providing legal counselling to complainants, even when the problems posed had nothing to do with violations of Human Rights.

The Decree setting up the Commission and the Internal Rules and Regulations established that the Chairman of the CNDH should inform the President of the Republic every six months on the actions taken to protect Human Rights, the recommendations served and the extent to which they had been complied with. At the end of the first semester, in December 1990, the report indicated that 1,343 complaints had been received; 33 recommendations had been served; 5 documents of non—responsibility had been sent to authorities originally indicated as having allegedly been responsible for such violations and, for different reasons, 397 files had been closed.

Since its very beginning, the responsibilities of the National Commission were much broader than the development of a Complaints Program; its activity also covers the areas of dissemination, publicity, training, early release benefits and more recently, special emphasis has been placed on prison matters; the search for and location of persons alleged to have disappeared in cases where it might be assumed that an authority or public servant was responsible for their disappearance; matters having to do with native Mexicans, international relations and legislative studies are among the most outstanding.

3.— The change in the CNDH's legal framework

Experience has demonstrated that the fact of having created the National Commission in the way it was done — that is to say, in a speedy but decided manner — turned out to be a better procedure than that which had originally been promoted; an amendment to the Constitution, an organic law or regulation then being derived from it. Apart from the fact that the Commission would have taken much longer before starting to act, its approval by the Authority for Revising the Constitution, and later by the Federal Congress, would have been much more difficult in view of the scant information and experience Mexico had on the subject of the OMBUDSMAN.

Of course, within the Commission itself, the relative weakness of its legal framework — explainable by the conditions in which it was set up — was fully recognized and from very early on a desire was expressed that the General Constitution of the Republic should recognize the existence of the institution.

Having gained the trust of large segments of society through the obvious proof of its real autonomy and independence, through testimony as to its utility and harmony with the Mexican juridical system, and with the experience accumulated over more than a year of intense and ceaseless work, the President of the Republic sent the Authority for Revising the Constitution a proposal to make the CNDH part of the Constitution.

On the 29th of January 1992, the Official Journal of the Federation published the addition to Article 102, Section B of the Constitution. The unusual fact that all the political parties represented in the Federal Congress voted in favor of this reform to the Constitution clearly showed that the path chosen was the correct one.

The basic principles or elements of this new constitutional measure are the following:

A) The system for the protection of Human Rights set out in Article 102, Section B, does not replace or eliminate any of the others foreseen in the General Constitution of the Republic; on the contrary, it enriches them and complements them with a new and different guarantee of Mexican constitutional justice, specifically within the domain of the constitutional jurisdiction of freedom, as Mauro Cappaletti called it.

B) The addition to the Constitution respects the State's federal structure, developing an eminently federalist scheme for the protection of Human Rights via an OMBUDSMAN.

Thus, each of the different States of the Federation will have an agency for protecting Human Rights, its characteristics being those set forth in the Constitution to deal with alleged violations of Human Rights on the part of authorities or public servants.

The national agency for protecting Human Rights (the CNDH) will receive, in the first and sole instance, alleged violations of basic rights committed by federal authorities or public servants.

C) The CNDH will act as the revisory organ for dealing with protests made in connection with the recommendations, agreements or omissions of the State agencies for the protection of Human Rights. That is to say, the national organism will be competent, in the first instance, in the case of violations committed by federal authorities or public servants and, in the second instance, in the case of State or municipal authorities or public servants, whenever a protest has been made in the terms established in its Organic Law. This system is clearly inspired by Mexico's own legal experience.

D) The recommendations formulated by the agencies for the protection of Human Rights, both at the national and State levels, will be autonomous; that is to say, they will be the outcome of the independence of the agency which, in order to arrive at conclusions, can only base itself on the force of the evidence and the convictions stemming from the proof.

The recommendations are of a non—binding character wich is precisely why they are called that. This means there is no possibility of applying them or enforcing them except if the authority or public servant on whom they are served are willing to do so.

E) Three subjects are outside the competence of the agencies for the protection of Human Rights: electoral, work—related and jurisdictional matters.

F) The National Commission for Human Rights cannot receive complaints on violations committed by authorities or public servants belonging to the Federal Judicial Power. This exception is of a global nature. That is to say, it can never deal with purely jurisdictional matters but, according to the terms of Article 102, neither can it if the nature of the violations is of an administrative order.

This exception, that was extensively debated by the Authority for Revising the Constitution, stems from the specific nature of the Federal Judicial Power which, in addition to its typically jurisdictional functions, is also the final authority for interpreting the Constitution.

Once the constitutional reform was approved, the Federal Executive started right away to present the bill on the National Commission for Human Rights. Finally, on the 29th of June, 1992, the Law was published in the Official Journal of the Federation.

Only one step remained to complete the renovation of the National Commission for Human Rights legal framework. This consisted of the council's approval of its Internal Rules and Regulations. This was done, and on the 12th of november of 1992, the Internal Rule of the National Commission for Human Rights, was published on the Official Journal of the Federation.

4.— Structure and functioning of the CNDN.

Apart from the importance of having a constitutional basis and legislative support and the permanent drive this meant for the institution, the new legislation on the CNDH consolidated it as an OMBUDSMAN and remarkably increased the instruments for facing up to this responsibility.

Briefly, progress might be summarized in the following way:

A) The Commission stopped being a decentralized agency and became an autonomous one, therefore enjoying its own legal identity and property.

B) The President of the Republic will appoint the Chairman of the CNDH, subject to the approval of the Senate, or during parliamentary recesses, the Permanent Commission of Congress. The term of office for the Chairman of the Commission shall be four years, after which he or she may only be appointed for one more term.

C) The members of the Commission's Council will be appointed in the same way as their Chairman.

D) The Chairman of the Commission and the General Visitors enjoy immunity in relation to actions carried out in the exercise of their functions.

E) In general, the procedure for dealing with complaints, is the outcome of the CNDH's nearly three years of experience.

F) The National Commission, through its Chairman and after prior consultation with the Council, may decline its competence in a particular case whenever it is deemed necessary in order to preserve the institution's autonomy and moral authority.

G) The General Visitors have the power to request at any time that precautionary or preventive measures should be taken in order to avoid irreparable violations of Human Rights.

H) The Chairman of the Commission, the General Visitors and the Assistant Visitors will have public notarial power.

I) The Chairman of the Commission must send an annual report to the Congress of the Union and to the President on the activities carried out during the respective period. This report is to receive wide public dissemination. No authority or public servant may give the National Commission instructions on this report.

With regard to the structure of the National Commission, the law now in force takes up the good points of the original Decree setting up the Commission and its Internal Rules and Regulations. Thus, the purely administrative structure which serves as a support and for the Chairman of the CNDH is complemented by:

a) Up to 5 General Visitors, whose responsibility consists essentially of receiving and admitting the complaints; using the mechanisms of conciliation to bring about immediate resolutions, carrying out the investigations and studies that each complaint deserves and preparing draft recommendations or non—responsibility documents.

b) An Executive Secretary, in charge of relations with national and international non—governmental Human Rights organizations; carrying out studies on international Human Rights treaties and conventions; preparing drafts of bills and regulations; collaborating in the preparation of the annual report and the special reports whenever required and managing the collection of documents.

c) The Technical Secretary of the Council, whose responsibility is centered on assisting the CNDH's collegiate body.

5.— Achievements and challenges of the CNDH

There is no doubt that during these nearly three years of work the National Commission has made significant progress, although there is still much more to be done if there is the wish to reach the levels of management and administration of justice that Mexican society demands.

Undoubtedly, Human Rights are now the subject of much more open, wide and informed debate on the part of the general public. Both individuals and groups have shown that they are absolutely willing to make denouncements even though they may be damaging. Little by little, the authorities changed theirway of speaking about this subject and instead of systematically denying that violations of Human Rights may and in fact do take place, they now accept the existence of irregularities and also show willingness to correct and remedy this situation.

More than words, the objectivity of figures can be a good indicator of what the Commission has achieved up to now.

A) During its nearly three years of work, the CNDH recorded a total of 17,757 complaints, of which 13,602 were concluded, resolving 76.60 % of them. Every day, more and more people come to ask for help from the CNDH. In the last six months, the Commission received on average 25,32 complaints a day, counting Saturdays and Sundays. In the month of June of 1992, alone, the Commission received more complaints than in its first six months of existence.

Fortunately, not all of these complaints are in fact about violations of Human Rights. Almost 50% of them are about facts that cannot be classified as such. In these cases the Commission provides legal assistance.

The increase in the number of complaints does not mean that there are more violations of Human Rights, but rather that society places more trust and belief in the work undertaken by the institution.

B) During these nearly three years, the CNDH has served 482 Recommendations and 196 Non—Responsibility Documents. Of the 482 Recommendations served, 174 have been accepted and totally complied with, 264 have been accepted and partially complied with, 19 are in the stage of being contested, 11 were not accepted and one, although accepted, received an unsatisfactory response, 8 of these recommendations have been accepted on time to present evidence; 15 are accepted without fulfillment evidences.

The 482 Recommendations referred to very varied violations ofHuman Rights: 129 of them had to do with violations of a penitentiary character; 73 with shortcomings in the preparation of a preliminary verification; 56 with illegal arrests or detentions; 36 with torture; 15 with attacks on journalists; 41 with failure to execute arrest warrants; 11 with persons alleged to have disappeared; 6 were of an ecological nature; 9 were on irregularities in administrative procedures, to mention just the most important ones.

The authorities with the greatest number of Recommendations during these nearly three years of work were: The Attorney General of the Republic, the Attorney General for Justice in the Federal District, the Governor of the State of Mexico, the Governor of the State of Veracruz and the Governor of the State of Tamaulipas.

C) By means of amiable settlement and mediation, the CNDH has managed to close 1,109 complaints, in adition to wich, 926 are at present being processed. This mechanism, without need for a Recommendation, makes it possible to remedy the Human Rignts that have been violated and punish those responsible for them either penally or administratively.

D) Through the intervention of the National Commission, in the last nearly three years a frontal attack has been made on impunity: 723 federal, State or municipal public servants have been sanctioned. The sanctions imposed range from penal action to public reprimand.

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Distr.
GENERAL

A/CONF.157/PC/92/Add.5
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ENGLISH
Original: ENGLISH

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REPORT ON OTHER MEETINGS AND ACTIVITIES

Report of the meeting of representatives of national institutions and organizations promoting tolerance and harmony and combating racism and racial discrimination

(Sydney, Australia, 19-23 April 1993)

GE.93-13862 (E)

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INTRODUCTION

A. Organization of the meeting

1. The United Nations Centre for Human Rights organized, in cooperation with the Human Rights and Equal Opportunity Commission of Australia, a meeting of representatives of national institutions and organizations promoting tolerance and harmony and combating racism and racial discrimination, in Sydney, Australia, from 19 to 23 April 1993.

2. The meeting was held in the context of the implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination, as requested by the Commission on Human Rights in its resolutions 1991/11 of 22 February 1991 and 1990/13 of 23 February 1990, and by the Economic and Social Council in its resolution 1991/2 of 29 May 1991. It also formed part of the United Nations programme of advisory services in the field of human rights, as authorized by the General Assembly in its resolution 926(X) of 14 December 1955.

3. The object of the meeting was to allow national institutions and organizations the opportunity to exchange experiences in combating racism and racial discrimination and to find ways and means by which national institutions could become effective instruments in enhancing social harmony in their respective countries.

B. Participation

4. Invitations to designate participants were extended to the national institutions and similar bodies of the following countries: Algeria, Australia, Benin, Brazil, Cameroon, Canada, Chile, China, France, Germany, India, Italy, Japan, Jordan, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Russian Federation, Sri Lanka, Spain, Togo, Tunisia, Turkey, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America.

5. The representatives of the following national institutions and similar bodies took part in the meeting: Human Rights and Equal Opportunity Commission (Australia); Commission on Human Rights (Benin); National Committee on Human Rights (Cameroon); Canadian Human Rights Commission (Canada); State Nationalities and Minorities Commission (China); National Consultative Commission on Human Rights (France); Minorities Commission (India); National Commission on Human Rights (Mexico); Human Rights Commission (New Zealand); Race Relations Office (New Zealand); Commission on Human Rights (Russian Federation); Human Rights Commission (Philippines); Human Rights Inquiry Commission (Turkey).

6. Invitations to send observers were addressed to all member States Members of the United Nations.

7. International organizations and the specialized agencies of the United Nations system, as well as other intergovernmental bodies, were invited to send observers.

8. Non-governmental organizations in consultative status with the Economic and Social Council and other non-governmental organizations whose interests are related to the topic of the meeting were also invited to send observers.

9. A complete list of participants is annexed to the report (annex I).

10. The Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall, was represented by Mr. Hamid Gaham, Chief Research and Standards Section, United Nations Centre for Human Rights. Mr. Daniel Atchebro acted as Secretary of the meeting.

C. Opening of the meeting

11. The meeting was opened by the Honourable Nick Bolkus, Federal Minister for Immigration and Ethnic Affairs of Australia, who made a statement. Statements were also made by Mr. Hamid Gaham, on behalf of the Assistant Secretary-General for Human Rights; Sir Ronald Wilson, President of the Human Rights and Equal Opportunity Commission, and Mrs. Irene Moss, Race Discrimination Commissioner of the Human Rights and Equal Opportunity Commission.

D. Election of officers, adoption of the agenda and organization of the work

12. At the 1st meeting, on 19 April 1993, the following officers were elected by acclamation:

Chairpersons: Sir Ronald Wilson (Human Rights and Equal Opportunity Commission)
Mrs. Irene Moss (Race Discrimination Commissioner)

Vice-chairpersons: Mr. Gérard Fellous (National Consultative Commission on Human Rights of France)
Mr. Sedfrey Ordonez (Commission on Human Rights of the Philippines)
Mrs. Graciela Rodriguez (Commission on Human Rights of Mexico)

Rapporteur: Mr. Salomon Nfor Gwei (National Committee on Human Rights and Freedom of Cameroon).

13. The Meeting adopted the following agenda:

I. Overviews and theoretical questions of racism, racial discrimination and national institutions

A. Current themes and major issues regarding racial discrimination, national and international perspectives

B. The perspective of indigenous peoples

C. An Australian initiative: Partnerships with Indigenous Peoples

II. National institutions and organizations and their role in promoting tolerance and harmony in the society

A. Structure and functioning of national institutions

B. Multicultural policies for tolerance and social harmony: the Australian experience

C. Relation between national institutions and non-governmental organizations

III. Legislation against racism and racial discrimination and its link to national institutions

A. International system and the role of legislation

B. National legislation to combat racism and racial discrimination and recourse procedures for victims of racism and racial discrimination

IV. Conclusion and recommendations

14. Following the adoption of the agenda, the meeting decided to set up three drafting committees to assist the Chair and the Rapporteur in elaborating recommendations and preparing draft resolutions on issues addressed to the meeting.

E. Documentation

15. The following background papers, contained in documents HR/AUSTRALIA/1993/SEM/2/BP.1-11, were prepared for the meeting at the request of the Centre for Human Rights and the Human Rights and Equal Opportunity Commission:

HR/AUSTRALIA/1993/SEM/2/BP.1	Racism and global change: issues and explanations by Professor Stephen Castles, University of Wollongong (Australia)
HR/AUSTRALIA/1993/SEM/2/BP.2	Combating racism: the need for urgent action. An indigenous perspective by Mr. Sol Bellear, representative of the Aboriginal and Torres Strait Islander Commission (Australia)
HR/AUSTRALIA/1993/SEM/2/BP.3	Relation between national institutions and non-governmental organisations by Professor A. Sivanandan, Director, Institute of Race Relations (London)
HR/AUSTRALIA/1993/SEM/2/BP.4	International system and the role of legislation by Mr. Dumisa Ntsebeza, Former President, Black Lawyers Association (South Africa)

HR/AUSTRALIA/1993/SEM/2/BP.5	Racial discrimination: the distinct status and rights of indigenous peoples by Ms. Dalee Sambo, Director, International Union for Circumpolar Health in Alaska (United States of America)
HR/AUSTRALIA/1993/SEM/2/BP.6	Principles relating to the status of national institutions - recommendations, resolutions and relevant decisions of international meetings relating to, or convened in preparation for the 1993 World conference on Human Rights by Mr. Brian Burdekin, Federal Commissioner, Human Rights and Equal Opportunity Commission (Australia)
HR/AUSTRALIA/1993/SEM/2/BP.7	Composition, jurisdiction and powers of national institutions by Mr. Brian Burdekin, Federal Human Rights Commissioner, Human Rights and Equal Opportunity Commission (Australia)
HR/AUSTRALIA/1993/SEM/2/BP.8	Introducing the National Consultative Commission on Human Rights (France) and excerpts from its Annual Report on the Fight against Racism and Xenophobia
HR/AUSTRALIA/1993/SEM/2/BP.9	The Council for Aboriginal Reconciliation: an innovative approach to race relations by the Hon. Senator Margaret Reynolds (Australia)
HR/AUSTRALIA/1993/SEM/2/BP.10	Multicultural policies for tolerance and social harmony: the Australian experience by Mr. Neil Edwards, Director, Office of Multicultural Affairs (Australia)
HR/AUSTRALIA/1993/SEM/2/BP.11	Nearly three years of experience by the National Commission for Human Rights (Mexico)

16. Papers submitted by the Council of Europe, the National Bureau against Racial Discrimination (Netherlands) and by a number of participants were used as working papers as follows:

HR/AUSTRALIA/1993/SEM/2/WP.1	Council of Europe
HR/AUSTRALIA/1993/SEM/2/WP.2	National Bureau against Racial Discrimination

HR/AUSTRALIA/1993/SEM/2/WP.3	Mr. Houdi Yang, State Nationalities Affairs Commission (China)
HR/AUSTRALIA/1993/SEM/2/WP.4	Mrs. Judith Karp, Deputy Attorney-General (Israel)
HR/AUSTRALIA/1993/SEM/2/WP.5	Mr. Ali Kazak, Ambassador of Palestine and Representative of the Palestine Liberation Organization

I. OVERVIEWS AND THEORETICAL QUESTIONS OF RACISM AND RACIAL AND NATIONAL INSTITUTIONS

17. This topic was discussed at the 1st and 2nd working sessions, held on 20 April 1993.

A. Current themes and major issues regarding racial discrimination, national and international perspectives

1. Presentation

18. Sub-topic A was introduced by Prof. Stephen Castles who made an oral presentation of the background paper he had prepared for the meeting (HR/AUSTRALIA/1993/SEM/BP.1). He gave an overview of the incidence and forms of racism throughout the world, and discussed its causes.

19. In his view, racism could be defined as "the process whereby social groups categorize other groups as different or inferior, on the basis of phenotypical or cultural markers, or national origin". Racism exists in various forms in nearly all countries. It could be institutional when it involves the use of political, social and economic power by one group to discriminate against other groups, in order to maintain its own power, to control the other groups and often to exploit their labour. The dominant group constructs ideologies of the inherent difference and the inferiority of the dominated groups. The power of the dominant group is sustained by developing structures (such as laws, policies and administrative practices) that exclude or discriminate against the dominated group. When it takes the form of spontaneous types of prejudice or discrimination arising out of racist culture it is generally known as informal racism. Manifestations of racism include prejudiced attitudes, discrimination (in legal status, employment, housing, eligibility for services, or access to public places), verbal or written abuse, incitement to hatred, or violence and harassment designed to intimidate or insult.

20. Prof. Castles emphasized the fact that racism cannot be seen in isolation: it is often linked to forms of oppression based on sexism, religious persecution, political conflict, economic exploitation or international conflict. Anti-racist strategies must therefore be based on the principles of universality and indivisibility of human rights.

21. After a period of relative decline, racism is today on the increase in many countries. In many cases, States tolerate or even participate in racist practices. The increasing incidence of racism in many areas is linked to current rapid changes in global economic, political and cultural relations, which have led to crises in political institutions, employment, social structures, culture and national identity. Such crises express themselves in insecurity and disorientation for some groups, and in increasing levels of violence.

22. Victims of racism include indigenous peoples, long-standing ethnic minorities, new ethnic minorities arising through migration, migrant workers and refugees.

23. While proposing ways and means to combat racism, he suggested a multi-faceted strategy which should not only deal with contemporary forms of racism, but also tackle its fundamental causes, which are historical, structural, cultural and psychological. This should be a matter for mainstream policies concerned with employment, social security, social justice, quality of life, citizenship and international relationships.

24. He also suggested that Governments introduce comprehensive policies designed to cope with all kinds of racism, whether institutional or not. Such policies should apply not only to citizens, but also to permanently resident non-nationals. Therefore, effective action against racism requires a comprehensive legal framework which includes:

(a) Laws prohibiting discrimination in employment, housing, provision of services and access to public places;

(b) Equal opportunity and affirmative action laws;

(c) Laws prohibiting racial incitement and defamation;

(d) Laws to combat racial harassment and violence;

(e) Laws and policies to combat marginalization of specific groups.

25. At the institutional level, Professor Castles encouraged measures aimed at

(a) Establishing human rights or anti-racism bodies (national institutions such as human rights commissions) designed to develop policies to facilitate implementation of anti-racist laws, to monitor racism and to provide support for people who have been victims of racism;

(b) Establishing managerial responsibilities within all relevant government agencies to ensure conformity with anti-racist laws and policies;

(c) Training and professional development measures for police and other officials to ensure that they understand and implement anti-racist policies.

26. Finally, Prof. Castles emphasized that non-governmental organizations have played and still have to play a major role in the struggle against racism. He encouraged their cooperation with government bodies.

2. Discussion

27. During the discussion, it was proposed that a clear analysis of the real causes of contemporary forms of racism be made in order to dissociate clearly new and old forms of racism because of their different origins. One basic cause of today's racism which was identified is the tendency to exclude certain social groups from the full enjoyment of economic and social rights, including education, housing and all basic human rights.

28. However, it was pointed out that the problem of refugees, migrant workers and minorities should be dealt with as such, rather than be automatically linked to the issue of racism.

29. Some participants agreed with the idea that the contemporary restructuring of the world is a major cause of the increase of racial tension and ethnic hatred. However, it was argued that States themselves are the most culpable perpetrators of racism, either directly or indirectly. Therefore, racism arises from the State's failure to act and, where this is the case, it is giving a de facto stamp of approval to popular racism. For example, in Europe, there are constitutions, legislation and government policies which disallow citizenship on the basis of ethnicity.

30. Referring to the situation in Europe, a speaker expressed concern about racial hatred and violence against migrant workers and members of other vulnerable groups. He also pointed to the attitude of some political parties which exploit racist feelings for political purposes, and the fact that even some government officials commit such acts of violence. He noted that impunity for crimes of hatred is a factor that encourages racist individuals. Street demonstrations and public meetings are not enough to stop the rise of racism. It was also pointed out that in some countries the rise of racism is a reaction to migration because racism cannot be justified under any circumstances.

31. Some participants stated that to combat racism it is necessary to stimulate public awareness and to stress that in most parts of the world, and especially in Europe, it is no longer possible to form a society based on racial homogeneity. Social policies must be formulated in accordance with the multicultural and multiracial dimensions of modern societies. An essential aspect of anti-racist policies should be to consider foreigners residing legally as an integral part of the society.

32. A speaker questioned whether legislation was in fact adequate to combat racism and pointed out the need for compassion from people, and a change of mind and attitude. He also stated that more attention should be paid to the role that religion can play both in dividing and bringing peoples together.

33. Many participants touched upon the specific aspect of racism and discrimination which is experienced by indigenous peoples in their countries. The need to examine the distinct rights of indigenous peoples was emphasized.

34. Prof. Castles, who had introduced the item, responded to questions and summed up the discussion.

B. The perspective of indigenous peoples

1. Presentation

35. Sub-topic B was introduced by Mr. Sol Bellear, Deputy Chairperson of the Aboriginal and Torres Strait Islander Commission (Australia). In his statement Mr. Bellear emphasized the significance of the consideration of an indigenous perspective, particularly because racism and racial discrimination are important factors in the lives of indigenous peoples. The struggle of

indigenous peoples is an ancient one, and the International Year of the World's Indigenous Peoples offers an opportunity for the indigenous peoples of the world to bring their concerns to the attention of the international community.

36. He outlined particular initiatives which are currently taking place in Australia, including a process of reconciliation and proposals for constitutional recognition of the status of Aboriginal and Torres Strait Islander people as the original owners of Australia.

37. Like the 300 million indigenous people living in more than 70 countries of the world, the indigenous Australians have suffered from the denial of their basic rights at the hand of colonizers. Today, indigenous peoples are the most disadvantaged group on Earth.

38. Mr. Bellear stated that indigenous peoples of the world are concerned about abuses against all minority groups. At present there is a movement developing in which indigenous peoples of the world assist each other in their struggles. In this context, he referred to the United Nations Working Group on Indigenous Populations and to international meetings being held in 1993 to bring indigenous peoples of the world together.

39. He expressed the hope that this movement will put pressure on Governments, international organizations, United Nations forums, non-governmental organizations and transnational corporations to "do the right thing" for indigenous peoples. A specific initiative to which he referred is the setting up of an independent international indigenous peoples' organization to monitor the activities of Governments and organizations and promote indigenous rights. He proposed that this suggestion should be discussed both at the present meeting and at the World Conference on Human Rights in Vienna.

40. He drew particular attention to the importance of land to all indigenous peoples. Land ownership is fundamental to the collective and individual well-being of indigenous peoples, but they have largely been dispossessed of their land. It has been stated by Aboriginal and Torres Strait Islander peoples, and recognized by major inquiries, such as the Royal Commission into Aboriginal Deaths in Custody, that land ownership is fundamental to resolving the range of problems faced by indigenous peoples.

41. He expressed the view that a Land Acquisition Fund at an international level would provide economic independence for indigenous peoples.

42. Referring to the importance of the relevant international treaties, such as the International Covenant on Civil and Political Rights, the Optional Protocol to the Covenant and the International Convention for the Elimination of All Forms of Racial Discrimination, he stated that the fulfilment of the obligations outlined under these treaties is crucial for indigenous peoples. He called on recognition for indigenous peoples of the basic human right to make their own decisions about issues which affect their lives.

43. Recalling the process of reconciliation undertaken in Australia, he recognized that changes are taking place, as non-Aboriginal people are beginning to dismantle racist attitudes and behaviours and indigenous peoples to claim their basic human rights.

44. However, he concluded by saying that as long as non-indigenous and indigenous peoples live apart, their potentials are inhibited and ignorance is sustained. Living together allows for them to benefit from their common humanity and diverse contributions to the common good.

2. Discussion

45. During the debate on the item, several speakers endorsed the comments concerning the importance of international machinery in ensuring change. It was pointed out that in order to monitor breaches of these instruments, it may be appropriate for several types of national institutions to operate simultaneously.

46. The importance of land claims was also supported, and the difficulties in achieving this in urban and more densely populated areas highlighted.

47. The parallels in the experience of indigenous peoples across the world was reinforced. It was pointed out that the denial of land and culture leads to consequences such as high rates of incarceration, infant mortality, suicide and violent death amongst indigenous peoples. Examples of the situations of particular indigenous peoples, such as the Innuit and Inu in Canada, and the attempts to address their problems were discussed. Concern was expressed that while some particular situations come to national and international attention, the constant problems faced by indigenous peoples are inadequately publicized. It was further stated that the particular experiences outlined by some speakers would be interchangeable with those of almost any indigenous group in the world.

48. In response to the question of the international Land Acquisition Fund, a participant registered a note of caution that such a fund should not end discussion on compensation and not foreclose the possibility of the return of land, or land in other regions. Reinforcing Mr. Bellear's point about the importance of the relationship with the land for indigenous peoples, the speaker also called on bodies of the United Nations to examine the question of the return of their land to indigenous peoples.

49. Addressing the issue of reconciliation, of the importance of political rights was emphasized. It was held that the right to self-determination is a prerequisite to all other human rights for indigenous peoples.

50. Elaborating on the proposal for an International Indigenous Peoples' Organization, questions were raised concerning its composition, funding and organization. It was proposed that such a body should be formalized within an international body such as the United Nations.

51. Many speakers felt that the ultimate solution for indigenous peoples must lie with the international community. On the question of national action, it

was stated that where national action is inadequate, indigenous peoples have no choice but to go to the international community.

52. Some speakers expressed particular concern about the role which major corporations, including the mining and timber industries, play as the major predators against the lands which indigenous peoples have inhabited.

53. Elaborating on the role of the international community, an outline of the mandate and aspirations of the United Nations Working Group on Indigenous Populations was provided, including the review of conditions of the world's indigenous peoples, the drafting of a declaration on the rights of indigenous peoples, and the hope that such a declaration will eventually become a convention which can be ratified by Member States.

54. The representative of the Assistant Secretary-General for Human Rights, Mr. Gaham, stated that the United Nations system had in fact been dealing with issues concerning indigenous peoples for at least three decades through several of its organs, especially the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. He also clarified the role of the United Nations Working Group on Indigenous Populations created in 1981 as a sub-organ of the Sub-Commission with a mandate (a) to review developments pertaining to the promotion and protection of human rights of indigenous peoples, (b) to give special attention to the evolution of standards concerning their rights and (c) to submit relevant recommendations to the Sub-Commission for approval and endorsement by the Commission and the Economic and Social Council. He also drew attention to the World Conference on Human Rights, which will be addressing the issue of indigenous peoples' concerns, both because 1993 is the International Year of the World's Indigenous Peoples and because this is a matter of major importance.

55. In concluding the discussion, Mr. Bellear pointed out that indigenous peoples' issues were generally either put to the bottom of agendas, or were omitted altogether. He called on all to put them henceforth at the forefront, where they ought to be.

C. An Australian initiative: partnership with indigenous peoples

1. Presentation

56. A background paper on sub-topics was presented by Senator Margaret Reynolds, Member of the Council for Aboriginal Reconciliation. She outlined the establishment and objectives of the Council, whose role is to promote a process of reconciliation between Aboriginal and Torres Strait Islander people and the wider community. Through leadership, education and discussion, the Council's aim is to promote a deeper understanding by all Australians of the history, cultures, past dispossession and continuing disadvantage of Aborigines, and to redress this disadvantage.

57. Other aims of the Council are to attain improved relationships, have a deeper insight into the value of indigenous cultures for all Australians, gain a sense of shared ownership and history, and to obtain for Aboriginal and Torres Strait Islander people greater opportunities for control over their own

destinies. The Council has a particular focus on the community level, and seeks to allow for broad discussion and consultation on the issues concerned.

58. The speaker reiterated the importance of the recent High Court decision in which it was recognized that Aboriginal and Torres Strait Islander ownership existed before European settlement, and may still exist in some cases (Mabo v. Queensland of 3 June 1992). This has been seen as a positive sign by many, but has also caused concern about the impact it may have on mining, pastoralism and certain other land-use enterprises amongst certain people.

59. She expressed the hope that these different interests can be balanced in a way which is respectful of the rights of all concerned, and that this decision can represent a positive turning point in the history of race relations in Australia.

2. Discussion

60. Comments were made on the statement of Senator Reynolds. A representative of the Aboriginal and Torres Strait Islander Commission pointed out that the process of reconciliation, has, in an informal sense, been occurring for a long time, and continues to occur at a community level.

61. On the question of harmonious relations, it was noted that indigenous peoples have traditionally been able to live in harmony with the environment, and in the same way it was possible for them to live in harmony with non-indigenous peoples.

62. Participants felt that the model of reconciliation was applicable in a broader context than just indigenous peoples. Similarities and comparisons with similar bodies in other countries were discussed and some questions raised, particularly with respect to compensation.

63. A statement about the need for the issues of concern to indigenous peoples to remain on the agenda after 1993 was made. Governments and national institutions were called upon not to remain silent concerning them.

64. The fact that indigenous peoples are distinct peoples with distinct rights was reinforced as this has constantly been compromised. Several speakers expressed the view that indigenous peoples must speak for themselves, and must not merely be placed on someone else's agenda. Where issues of concern to them are being dealt with, indigenous peoples should be consulted at all levels. In this context, there was concern that the work of the Working Group on Indigenous Populations would soon fall under the control of non-indigenous people.

65. The need to respect the political, economic, social and cultural rights of indigenous peoples before racism can be eliminated was reiterated by several speakers. However, a question was raised about the exact meaning of "self-determination", and the types of rights which were being called for under the banner of self-determination.

66. It was stated that a conflict exists in many contemporary societies where the form of democratic government meant that the majority determines the outcome, thus making it unlikely that the interests of numerical minorities would be achieved. The question was raised as to how threats to indigenous peoples would be balanced against the economic and political interests of more politically powerful groups.

67. It was pointed out in this context that the judiciary has played a leading role in combating racism, but the role of Governments and the international community was questioned.

68. With regard to the different forms of recognition of rights, it was indicated that some countries recognize the rights of indigenous peoples in their constitution, although they may not be clearly defined, while others have different forms of recognition. Furthermore, some attempts to extend these rights have met with a great deal of resistance. In many countries significant work would be needed to achieve constitutional recognition.

69. Concern was expressed that projects, such as the reconciliation process, may end up being no more than rhetorical exercises and would not effect change "on the ground" for indigenous peoples; past reports indicate that this has been the case with some government initiatives. In order to ensure that this did not occur, there should be open monitoring of Government, and it should not be responsible for monitoring itself.

70. In concluding the debate the speaker indicated that there was a precedent in Australia for self-government, and that this was being examined as an option for indigenous communities in parts of Australia. She also re-emphasized that reconciliation is a process, and some of the outcomes which may seem impossible today may be possible tomorrow as a result of what will be done to educate, inform and alter people's attitudes.

II. NATIONAL INSTITUTIONS AND ORGANIZATIONS AND THEIR ROLE IN PROMOTING TOLERANCE AND HARMONY IN THE SOCIETY

71. This topic was discussed at the 3rd and 4th working sessions, held on 21 April 1993.

A. Structure and functioning of national institutions

1. Presentation

72. Sub-topic A was introduced by Mr. Brian Burdekin (Australia), who made an oral presentation of the background papers he had prepared (HR/AUSTRALIA/1993/SEM/2/BP.6 and 7).

73. In order to identify ways and means of strengthening national institutions, Mr. Burdekin analysed the structures and functioning, as well as the power and jurisdiction, of existing national institutions and later focused on the Australian Human Rights and Racial Opportunity Commission. He underlined the importance of the topic by referring to the growing interest in a number of countries in establishing national human rights institutions.

74. He recalled the guidelines embodied in the Principles relating to the status of national institutions (Commission on Human Rights resolution 1992/54 of 3 March 1992, annex) and underlined basic criteria which should enhance the effectiveness of national institutions and increase their independence.

75. He expressed his preference for a multi-faceted approach in the protection of human rights. In that connection he indicated that the jurisdiction of a human rights institution should be defined as broadly as possible and should include monitoring and reporting on the nation's compliance with international instruments on human rights. The charter of the commission should be established by law or by the constitution and the independence of the commission should be specified in its charter (including by providing for a guaranteed term of appointment of its members). In addition, national institutions should have broadly defined promotional and educational functions in relation to human rights. Both promotion and protection of human rights should be based on the principle of universality and indivisibility of human rights.

76. Mr. Burdekin also stated that a national institution on human rights should work in cooperation with non-governmental organizations. He advised that it should be authorized to work with and consult international organizations and other national commissions.

77. Among other functions to be entrusted to national institutions, the speaker referred to the power to review existing and proposed legislation for consistency with human rights instruments/policies and recommend legislative and other measures to protect human rights; to provide accessible and effective remedies in cases of discrimination and human rights violations; to initiate broad investigations, including by conducting public inquiries which involve taking evidence and making a public report; to gather evidence and require production of documents and other evidence for the purposes of its investigations.

78. Other mandates to be vested in national institutions should include the possibility that institution attempt to resolve complaints by conciliation. Effective and accessible means of enforcement of the determinations of the commission or tribunal should also be provided.

79. Finally, Mr Burdekin suggested that determinations or recommendations by a human rights institution should be made publicly available.

2. Discussion

80. Many participants supported the views expressed by Mr. Burdekin. Some representatives of national institutions explained their method of work and showed how the structure and competence of their organizations meet the criteria presented by Mr. Burdekin. Others mentioned the lack of financial resources as the main obstacle to their action.

81. One participant questioned whether the model of a national institution with a broad spectrum of competence is suitable for all countries. It was felt that the establishment of a national institution should correspond to the degree of urgency of the human rights situation in the country concerned.

When the human rights of vulnerable groups (minorities, migrant workers, indigenous peoples, disabled people, etc.) required specific actions, a specific national institution seemed preferable.

82. With regard to the relation between national institutions and the judiciary, it was stated that whilst national institutions are essential mechanisms for strengthening the protection of human rights, they should never replace but should rather, complement the existing safeguards inherent in comprehensive and effective legal structures; structures that are made effective by independence, impartiality, accessibility and that receive adequate and appropriate resources.

83. In addition, the creation of any national institution should be accompanied by a comprehensive review of existing legal and other institutions in order to strengthen its capacities to safeguard human rights. Such an initiative needs to be supported by Governments that are fully prepared to ensure that no one can commit human rights violations with impunity.

84. One participant suggested that there was a dichotomy between governmental and non-governmental organizations. He noted that such a situation would not contribute to an understanding of the complementary role played by all parties in combating racism and racial discrimination. He drew attention to the diversity and pluralistic nature, role and responsibilities of non-governmental organizations and stressed that trade unions are different from organizations representing ethnic communities, migrant workers and indigenous peoples; for the trade union movement, combating racism and discrimination is an integral part of promoting and ensuring the basic human rights of workers.

85. It was also requested that the meeting should recognize the fundamental role of domestic and international non-governmental organizations whether they deal exclusively with questions of racism or combat racism within broader frameworks of human rights work, and reflect on the complementary role of national institutions and NGOs at the regional and international levels.

B. Multicultural policies for tolerance and social harmony: the Australian experience

1. Presentation

86. Sub-topic B was introduced by Mr. Neil Edwards, Director of the Office of Multicultural Affairs of Australia, who made an oral presentation of the background paper prepared by his agency (HR/AUSTRALIA/1993/SEM/2/BP.10).

87. Mr. Edwards described the institution he heads as an unusual one in international terms. The Office is the custodian at the national level of Australia's comprehensive range of multicultural policies designed to make the diverse Australian society work well and fairly. For that purpose it develops specific policies to address racism itself but also has a wide range of programmes addressing racism less directly and contributing to remove those conditions under which racism might otherwise flourish.

88. These policies draw very much from Australia's democratic traditions and its concern for human rights, and from the Australian preference for pragmatic

solutions. They seek to manage Australia's diversity in the interests of the individual and the Australian community as a whole. These policies proceed from the view that a cohesive, creative and flourishing society is not an accident. Rather, Government must make real efforts to ensure that all Australians have genuine equality of opportunity. They also proceed from the principle that all communities have a right to participate.

89. In 1989, these policies were brought together and expressed as the National Agenda for a Multicultural Australia. Most significantly, the National Agenda was adopted by Government only after extensive formal community consultations conducted by an advisory council comprising leading figures from Australia's diverse communities, and it has been embraced by all segments and levels of government.

90. The National Agenda sets out a policy framework and broad principles for living with diversity, principles which encourage not only tolerance of diversity but also acceptance of the fact and value of diversity. It sets out the work to be done by Government to make its programme fair. Furthermore, the National Agenda conceived that Australia's diversity could be deployed creatively and productively.

91. One of the conclusions put forward by Mr. Edwards is that multiculturalism should not be treated as a problem, but as a prospect; a resource from which benefits can be drawn. With this approach its impact on racism could be real. In fact, where diversity itself is valued, the underlying assumptions of racism are difficult to sustain.

C. Relation between national institutions and non-governmental organizations

1. Presentation

92. Sub-topic C was introduced by Prof. A. Sivanandan (United Kingdom), who made an oral presentation of the background paper which he had prepared for the meeting (HR/AUSTRALIA/1993/SEM/2/BP.3).

93. He presented the functions and constraints of national institutions in combating racism, and showed how non-governmental organizations perform a vital role in complementing the work of national institutions and reaching areas where the latter are unable or unwilling to go.

94. Using the experience of the Institute of Race Relations in London as a case study, he outlined the purpose and thrust of non-governmental organizations, and derived from that an understanding of the relationship between national institutions and non-governmental organizations as one of "creative tension" rather than of subsumption (of non-governmental organizations to national institutions) on the one hand or of polarization on the other. He acknowledged, however, that this requires non-governmental organizations to have full control over their work and destiny, irrespective of who finances them. In addition, their research or investigations should

not be policy oriented, but issue oriented. In that sense, the influence that non-governmental organizations exert is not directly on the Government but on public opinion and therefore on Government in a sort of "trickle-up" process.

95. Prof. Sivanandan offered the example of the Institute of Race Relations publication on Black deaths in custody. Although it started from the points of view of the families of the deceased, the information, gathered and analysed in an authoritative report, impacted upon Law Lords, prison inspectors, politicians and the media. Similarly, the investigation that the Institute carried out on the policing of Britain's Black communities became part of the evidence examined by the Royal Commission on Criminal Procedure.

96. In the view of Prof. Sivanandan, influence and relevance are not at opposite poles, nor are they susceptible to one definition and application; they are, however, the key issues to be addressed in any debate on the relations between national institutions and non-governmental organizations.

2. Discussion

97. The participants generally endorsed the view that there is a necessary place for both national institutions and NGOs, and that they play complementary roles.

98. Representatives of various national institutions indicated that accusations of non-independence and compromise of principles were not accurate in all cases. They referred to work which had been done by various national institutions which had in fact been critical of policies or practices of the Government in power. They also stated that they were not unaware of the dangers of compromise or co-option, and thus valued the critical input of NGOs.

99. The discussion looked at the respective strengths and weaknesses of the two types of institution. For instance, it was pointed out that it is an advantage that NGOs can be spontaneous, reactive and vibrant, although they may be limited in their effectiveness. Several speakers held that it is precisely the proximity of national institutions to Government which provided them with some of their effectiveness. On the other hand, there are certain tasks which NGOs can achieve more effectively than national institutions, and this was recognized by a certain representative of national institutions in their work.

100. Representatives of NGOs argued that their role should not be limited to one of agitation, but that they should be allowed to have inputs into the work done by national institutions, and be directly involved in the process of monitoring the implementation of strategies developed by national institutions or Government.

101. Addressing the criticism that as national bodies, national institutions cannot directly address the needs of and be responsive to local or minority communities, it was said that the role of national institutions in educating the community should be twofold: they should speak to the majority about the concerns of the minorities, and also call on the minorities to dispel the misperceptions of the majority.

102. Representatives of national institutions would prefer their relationship with NGOs to be one of partnership and complementarity. In this context, several representatives of national institutions gave examples of the ways in which they work in cooperation with NGOs to achieve their shared objectives in combating racism. The question was raised of the appropriateness of NGOs being integrated into national institutions in some way, and whether it is possible for them to be part of human rights commissions. One speaker suggested that NGOs and national institutions could benefit from exchange programmes in which expertise, experiences, etc. could be shared.

103. Caution about the independence of national institutions, especially where they are dependent on Governments for funding, was reiterated by several speakers. According to some speakers, if a body was accepted by a Government which the community saw as oppressive, it would automatically lose credibility. NGOs, on the other hand, can retain their independence and therefore their credibility.

104. Representatives of several national institutions asserted that it was possible to work independently and that they, too, saw independence as a positive factor. Their relations with the Government did not necessarily mean that the body became part of that power structure.

105. A number of speakers representing non-governmental organizations reiterated the comments made by the expert concerning the important role played by NGOs, and the potential shortcomings of national institutions. In particular, the failure of some States to fulfil their obligations under international treaties was pointed out, and it was proposed that the Committee on the Elimination of Racial Discrimination could play a role in assisting States which are remiss with respect to their reporting obligations to complete their reports.

106. A number of NGO representatives gave examples of the work which they had been doing and explained how they are able to introduce particular perspectives and approaches. One speaker emphasized the need for attitudinal change and the recognition by all peoples of the oneness of humanity. Oneness was reflected in the concept of the universality of human rights and in the international instruments. In exploring how NGOs could be independent without being marginalized, it was suggested that there should be a legal framework which provided them with certain powers such as powers of investigation and access to information, and systems of funding without patronage.

107. The need for a multi-faceted approach was discussed and several speakers spoke of the need for diversity which extended beyond the simple dichotomy of national institutions versus NGOs. Such an approach includes the International system. The work of particular types of organizations such as the trade union movement, which has played a role in combating racial discrimination, was also evoked.

108. Elaborating on the theme of the changes in the type of relationships over time, the example of South Africa, where for lack of a national institution NGOs have been handling human rights issues, was given. Concern was expressed that where the Government itself has racist policies, any Government-based body would almost inevitably reflect these same racist structures and in fact

implement the same policies. It was noted, however, that as opposition grew in such a community, and was encouraged through NGOs, this could be altered.

109. The expert's assertion that "multicultural policies" can have a negative impact on the ability of minority groups to advocate for themselves or put their particular needs to Government was attacked by some speakers who pointed out that indigenous peoples are not "ethnic minorities". They are distinct peoples with distinct rights, and must be recognized as such. Similarly, indigenous peoples' organizations are classified as NGOs, and are not given a status in their own right. However, at the international forums, indigenous peoples have been forced to associate themselves with NGOs in order to get a voice.

110. In his response, Prof. Sivanandan noted the diversities existing between countries, and indicated his pleasure in hearing of those countries where national institutions work independently. He noted, however, that this was not always the case. He concluded with three strictures which national institutions should adopt. First, their research should not be on the victims, but on the victimizers. Second, they should not speak for the victims, but allow the victims to speak for themselves. And finally, they should not speak for NGOs, but also allow them to speak for themselves.

III. LEGISLATION AGAINST RACISM AND RACIAL DISCRIMINATION AND ITS LINK TO NATIONAL INSTITUTIONS

111. This topic was discussed at the 5th and 6th working sessions held on 22 April 1993.

A. International systems and the role of legislation

1. Presentation

112. Sub-topic A was introduced by Mr. Dumisa Ntsebeza who made an oral presentation of the background he had prepared for the meeting (HR/AUSTRALIA/1993/SEM/2/BP.4). Mr. Ntsebeza looked at the role of the international community and international legislation in general, with a particular focus on the situation in South Africa.

113. He described in detail the policies in South Africa, and the extreme effect which they had on the Black community. He emphasized that the Black community in particular has virtually no faith in the law enforcement agencies of South Africa to implement any programmes which will combat racism, as they are seen as ultimately being arms of a racist regime. It has been the experience of the community that, contrary to opposing racism, they have in fact strengthened and defended the apartheid machinery.

114. Mr. Ntsebeza raised the question as to how effective the international machinery was in dealing with racial violence in South Africa. He pointed to the United Nations Observer Mission in South Africa, and questioned whether an "observer" could actually contribute to the peace process and deracialization of South Africa. He considered that such questions are relevant, not only for South Africa, but more generally in the context of evaluating the international system in combating racism.

115. He referred to resolutions adopted by the Commission on Human Rights and the Economic and Social Council which express a conviction that there is a need to take more effective and sustained international measures for the elimination of racism and racial discrimination and the eradication of apartheid in South Africa. Such resolutions also appealed to States to ratify, accede to and implement the relevant human rights instruments. They have reaffirmed the purpose, set forth in the Charter of the United Nations, of the United nations achieving international cooperation in encouraging respect for human rights without distinction as to race, sex, language or religion. From this, he concluded that a call for a fight against racism through international instruments is being made.

116. Mr. Ntsebeza discussed the relevant international instruments relating to human rights, in particular the International Convention on the Elimination of All Forms of Racial Discrimination and the International Convention on the Suppression and Punishment of the Crime of Apartheid. He also referred to the international norms adopted by the International Labour Organisation and the United Nations Educational, Scientific and Cultural Organization and detailed the most relevant provisions of the various instruments. The key question which he raised was, "How far, on what basis and under which circumstances can these conventions be enforced?"

117. Describing the role of national legislation, he argued that despite the existence of a bill of rights which guarantees certain fundamental freedoms in various countries, it often requires specific legislation or judicial opinion for it to become useful and used.

118. He concluded that the international system can be a watchdog over the world community in respect of racial discrimination, and that its resolutions can have the binding force of law. However, the problem of implementation is significant. It is this problem that he put to the delegates.

2. Discussion

119. The discussion took up the question of the role of the international community in ensuring the implementation of standards outlined in the relevant international treaties. The key question was how to make effective the enforcement of international human rights.

120. Some speakers held the view that while the United Nations may not invoke enforcement powers or pass resolutions to the effect that the actions of countries contravene international law, it does nevertheless have the power to bring about change. The international community can use its democratic processes and its surveillance powers to put pressure on oppressive regimes so that they ultimately alter their practices. However, the view was also expressed that in some cases, and in particular where there are extreme breaches of human rights, a more intense response may be necessary. Although the powers of surveillance may be useful, this could not be considered sufficient where the Governments concerned continued to effect gross breaches of human rights.

121. It was noted that there is actually a precedent on the regional level for greater inter-country involvement, as in the case of the establishment of the

European Court of Human Rights. Also, on the basis of some of the recent incidents in the former Yugoslavia, the Security Council decided to establish a war crimes tribunal. Some insisted that such actions, while commendable, should only represent a beginning. The role of the international community should not be limited to promoting human rights and tolerance, but in cases of gross violations it should intervene directly.

122. The question of the implementation of international standards was taken up by representatives of national institutions. However, attention needs to be turned to those cases where this is not effective. In this connection, it was proposed that one of the roles of national institutions is to ensure that national legislation is in conformity with the international instruments which had been acceded to.

123. Although national integrity and the sovereignty of States were important principles, they should not be seen as ultimate principles and the international community should have the power to override them. In this regard, the universality of human rights was pointed out.

124. Certain speakers expressed a degree of disillusionment about enforcement at the international level, seeing it as too slow and relatively ineffective. It was noted that the limits on the role of the international community are related to the nature of international jurisprudence, and in particular the nature of the Charter of the United Nations which limits the power of intervention.

125. On the other hand, significant progress made in the last 40 years in the international community was recognized. International treaties have an effect at the national and local levels. There is an increasing consciousness and recognition of the thrust of these instruments. There is also a changing, transcending ethic which must be recognized; according to this view, such an ethic will ultimately require a degree of surrendering of national sovereignty. World unity would then take precedent over national sovereignty.

126. Some speakers were convinced that the world's religions can play a key role in drawing attention to the fact that there is only one human race, and that we are all equal in the sight of God. Only through recognizing this can universality be realized.

127. Another major issue which was taken up by the delegates concerned the question of discrimination against non-citizens and how this is handled by legislation. Several speakers pointed to article 1 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination which provides that nothing in the Convention is to apply to distinctions based on citizenship. It allows for States to pass legislation which offers no protection to persons who are classified as non-citizens.

128. In many States, there is a large number of persons who are non-citizens (often migrant workers), and are thus not protected. There are millions of illegal workers across the world who are exploited, exposed to human rights violations and are ignored by host and home Governments. Migrant workers and illegal entrants are offered little if any protection from discriminatory practices and policies, either by the host State, or by their country of

origin. Several speakers requested that the international community and the United Nations address this question, and alter the instruments accordingly.

129. The contrary view was that article 1 (2) need not in fact be interpreted this way. This reading was supported by the fact that many other articles explicitly state that all rights protected by the instruments belong to all people, irrespective of race, colour, or national or ethnic origin.

130. Reference was made to article IV of the International Convention on the Suppression and Punishment of the Crime of Apartheid which provides that States have an obligation to prosecute persons for defined acts, whether or not the persons reside in the territory of the State or are nationals of that State, or some other State, or are stateless persons. It was suggested that this could act as a model for articles in other conventions dealing with racial discrimination.

131. Another question raised concerned the possible disadvantages of the structure of the international system in which different parts of the overall human rights strategies were dealt with by separate bodies. International conventions are developed in the United Nations system in different forums. For example, treaties relating to labour issues are developed in the ILO, while other human rights treaties may be developed by the Commission for Human Rights. This division is then reflected in national systems where different bodies are given the responsibility for dealing with human rights and labour matters. There is insufficient dialogue between the different arms of Government.

132. On the issue of the monitoring function in relation to the fulfilment of treaty obligations, this is frequently done by Government and in particular national institutions. There may well be, and certainly at times is, a widening gap between what Governments say in the reports and what they are actually doing. It is particularly problematic where the reports are written without consultation or input from the community and non-governmental organizations. They are frequently not publicly available. Thus, there is no debate and no monitoring, and there cannot be an open critique of the content of the reports.

133. The issue of minimum standards was raised. It was suggested that when a country acts in a way which clearly violates the minimum standards, it would be evident. However, the question remained as to whether there is a threshold at which the international community will intervene.

134. In his reply, Mr. Ntsebeza stated that the subject was of concern to all, but regretted that many did not want to venture solutions. Black persons in South Africa are still not citizens of their own country and continue to suffer outrageous abuses on the basis of their race, and thus the question of international intervention is particularly relevant. He revealed that the liberation movement in South Africa want a peacekeeping force, but the South African Government has refused this.

135. According to Mr. Ntsebeza, Governments are reluctant to comment on how to ensure implementation after ratification, and even to promote ratification, because there are practices within their own countries which they would not

wish to be examined. It is valuable for Governments to discuss the positive actions which they are taking, but there are breaches in other countries which cannot be dealt with in the same way. He agreed that there should be minimum standards which should be complied with in all cases.

136. On the question of intervention, he said there has been some inconsistency in certain cases where the United Nations has intervened, but that political priorities influenced these decisions. He cited the case of the occupation of Angola by South Africa where the United Nations did not intervene, although it did in the case of Kuwait and Iraq.

137. In South Africa the liberation movement does not feel that there is even-handedness in the application of United Nations views and resolutions. In fact, the cynical view is that the closer one is to the view of the United States Government (which is the only world Power), the more likely it is that the Security Council will actually consider resolutions. He felt that the reluctance of States to take up this question may reflect the fact that national sovereignty is seen as superseding those clauses concerning universality.

138. He commented that in South Africa, pressure groups have been extremely limited in their effectiveness and concluded that as Governments are unwilling to take a strong stand on the issue, the only movement may have to come from organizations operating outside government, such as non-governmental organizations and trade unions. They may take up the role of putting pressure on their Governments to push them to look at this question internationally.

B. National legislation to combat racism and racial discrimination and recourse procedures for victims of racism and racial discrimination

1. Presentation

139. Sub-topic B was introduced by Ms. Dalee Sambo who made an oral presentation of her background paper (HR/AUSTRALIA/1993/SEM/2/BP.5).

140. Ms. Sambo claimed that the accommodation of indigenous human rights, as distinct rights, within national constitutions could serve to elaborate upon the relationships between indigenous peoples and States, which are both legal and political relationships. Agreement on a "context clause" or "general provisions", drafted from an indigenous human rights perspective, would establish the basis or framework for such constitutional amendments. (With the exception of the qualifier language in the general provisions of ILO Convention No. 169, these provisions provide a good basis for such a contextual statement.) This would also ensure that such amendments were interpreted in a broad and flexible fashion in the future. Such a "context clause" could embrace many of the concerns that indigenous peoples have raised at the international level, which require effective implementation domestically.

141. First and foremost, recognition of the right to be different and the fact that indigenous peoples are first peoples or nations must be included, thus establishing a cultural context from an indigenous perspective. Further,

recognition of indigenous peoples' right to maintain their distinct cultural characteristics and to ensure "their integrity as distinct societies" must also be clearly stated.

142. She held strongly that self-determination of indigenous peoples must provide the framework for indigenous-State relations. Because of the precondition of the right of self-determination and the inherent right of self-government, as necessary to the exercise and enjoyment of all other rights, it too must be recognized at the national or constitutional level. An integral part of the right of self-determination is the right to autonomy and self-government. The Governments or political institutions of indigenous peoples would have to be afforded constitutional protection as well. Such relationships must be based upon equality in order to end racism and racial discrimination. Self-determination and self-government based on an equal relationship between indigenous governments and State Governments would effectively establish both the political and legal relationship of indigenous peoples to the State and its various political subdivisions. The various territories, provinces or municipal governments would not be able to violate or undermine the constitution - its force would be greater than the authority of such political subdivisions. Without such a level of recognition, States will effectively institutionalize the problem of racism and racial discrimination. The lack of explicit recognition of the fundamental right of self-determination of indigenous peoples allows for the continued domination, exploitation and subjugation of indigenous peoples, by States or their political subdivisions.

143. Naturally, the exercise of self-determination is a right of a people; therefore, the explicit recognition of the collective and individual rights of indigenous peoples would have to be addressed in a constitutional framework as well. The overall impact of the inclusion of a cultural context, which recognizes the distinct rights and status of indigenous peoples, within a constitutional framework would be a positive first step towards countering racial discrimination. It would touch at the very heart of the matter of State-indigenous peoples relations, and would help to end or reduce the vulnerable state of indigenous communities. The recognition of collective rights within a constitutional framework also ensures the legal standing of indigenous peoples with regard to recourse mechanisms or procedures.

144. According to her, State efforts to limit or qualify the right of self-determination of indigenous peoples must end, in order to end the discrimination against indigenous peoples. There is no excuse for such limitations and qualifications on the right of self-determination for indigenous peoples. As stated above, any efforts to limit this fundamental right is racial discrimination.

145. In order to minimize violations of indigenous human rights, Ms. Sambo proposed that national and international complaint forums should be established. This would greatly assist indigenous peoples in their ongoing struggle for survival. At present, there are few recourse mechanisms that indigenous peoples can turn to for reporting and rectifying the violations that are a part of their day-to-day lives.

146. Where disputes or conflicts arise, indigenous peoples must have the individual and collective right to access and prompt decision by mutually acceptable and fair procedures for resolving conflicts or disputes with States. National recourse procedures for victims of racism or racial discrimination must be flexible enough to include different forms of conflict resolution. Such measures should not be limited to litigation or commonly used Commission on Human Rights mechanisms. For example, they should include negotiation, mediation, conciliation, arbitration or judicial settlement at national courts.

147. Such recourse procedures must include a cultural context, one that respects and recognizes indigenous rights, values and perspectives. If mediation or negotiation takes place to resolve a complaint or dispute, the outcome must be culturally appropriate to the peoples concerned - a European or non-indigenous solution should not be applied to an indigenous affair or matter.

148. There must be no requirement for indigenous peoples to "exhaust" domestic remedies. The denial of access to justice through international mechanisms has been repeatedly abused by States. Indigenous peoples have the right of access to international forums and to seek justice at the international level. This matter is also tied to the legal standing of indigenous peoples in the international arena. Hence, the matter of indigenous peoples as subjects of international law again comes into play.

149. Needless to say, if such a constitutional approach is taken to respond to the rights, aspirations and concerns of indigenous peoples in a comprehensive fashion, enabling national legislation would have to follow. Those matters which require national legislation to give full effect to the constitutional provisions would necessitate the involvement of indigenous peoples and their free and informed consent. Constitutional and legislative approaches may be one tool that indigenous peoples can use to build healthy and viable communities, and relationships based upon respect and real equality.

150. Without clear and explicit recognition of indigenous rights at the national and international level, the land dispossession, cultural genocide and other human rights abuses faced by indigenous peoples worldwide will continue.

2. Discussion

151. With regard to the issue of self-government and self-determination for indigenous peoples, a speaker took up the point that current national legislative measures do not go far enough in covering the concerns of indigenous peoples and that the recognition by States of indigenous peoples as indigenous peoples and not ethnic minorities is fundamental. In that perspective, indigenous peoples' right to self-government is a workable situation, with the consequence that indigenous peoples could legally exist as nations within nations. Another speaker gave the example of Canada where recent constitutional paths and an accord with Canadian-Indians, known as the Charlottestown Accord, would have created a third order of government recognizing the right of indigenous peoples to manage their own affairs. However, a speaker underlined the need to clarify the right of

self-determination for indigenous peoples especially where it relates to the question of the territorial integrity of the State. Clarification of a United Nations definition of indigenous peoples and related concepts (aborigine, minority) was also sought.

152. Commenting on the role of national legislation in combating racism, one participant referred to the recent experience of the Government of Israel which passed a law prohibiting racist political parties from seeking election. She added that the challenge for Governments is to combat racism without undermining democratic ideals. Reference was also made to Australia's Race Discrimination Act which gives a specific role and position to the Race Discrimination Commissioner in the Human Rights and Equal Opportunity Commission. The adoption of racial vilification legislation aimed at combating racist violence is pending before the Australian Parliament. It was emphasized that national institutions should have the responsibility of introducing national legislation to combat racism.

153. Several participants discussed the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide and proposed extending the concept of genocide within the Convention to include cultural genocide.

154. In her concluding remarks, Ms. Sambo stressed that the experience of indigenous peoples can be shared with national institutions and Governments in the fight against racism. There are useful experiences, values and guiding principles that can be learned from them. She also mentioned the need for direct and meaningful participation of peoples in the development of national legislation. In that endeavour, the integrity of a people, including minority groups, should be taken into consideration. She specified that the right of self-determination for indigenous peoples has both external and internal application.

155. As for the notion of indigenous peoples, she stated that while the United Nations is seeking to complete a definition several concepts apply:

(a) Being the original inhabitants of the countries where they live;

(b) Having an economic, social, political and spiritual association with that area;

(c) Being in a non-dominant position within a dominant society.

156. She acknowledged that any development aimed at combating racism between peoples will depend on the recognition of equal rights for all and the development of mutual respect.

IV. CONCLUSIONS, RECOMMENDATIONS AND CLOSURE OF THE MEETING

A. Conclusions

157. During the seventh session, held on 23 April 1993, the participants at the meeting heard the conclusions put forward by the experts.

158. Professor Castles outlined the following points as those which he saw as having been of particular importance in the meeting:

(a) The need for different structures in different countries to promote and protect the human rights of vulnerable groups;

(b) The importance of non-governmental organizations and the need for independent international and national support so that they can function effectively;

(c) The need to protect the position of persons who are non-citizens of the State in which they are resident and the importance of international organizations, as well as States, in achieving this;

(d) Cooperation between the three levels: international, national and non-governmental organizations.

159. Mr. Dumisa Ntsebeza noted that the countries which have adopted legislation to combat racism are in a much better position than those which have not. In those countries which do not have legislation the possibility for action is far less clear-cut.

160. He noted that racism and racial discrimination are worldwide phenomena which need to be monitored on a worldwide basis. As long as there are double standards in the way the world treats each case, the way forward in combating racism will be difficult.

161. He called upon all Governments which had ratified the relevant treaties to try to convince those Governments that have not done so to ratify the treaties. They should use all methods possible and appropriate, be they diplomatic or economic, to ensure that there are minimum standards which all Governments will observe. It is the responsibility of States to use their relationships with other States to ensure that these minimum standards are observed.

162. He felt that structures outside the formal government structures will play a very important role in achieving this. These include indigenous peoples' organizations, non-governmental organizations and trade unions. In view of their importance they should be placed at the same level as government bodies in all forums including the present meeting and be given the same rights to participate and contribute to the debate.

163. Ms. Dalee Sambo concluded by pointing to the threats facing indigenous peoples, stressing that this is not an academic issue but one which is very real. She urged the participants to recognize that indigenous peoples are distinct peoples with distinct rights. Governments, national institutions

and the United Nations must take this into account. It was important that, on the one hand, indigenous peoples and other vulnerable groups use the powers available to them as much as possible, and that international minimum standards and norms be adhered to, in the other.

164. She supported the proposal concerning the setting up of a structure whereby the non-governmental organizations can have a monitoring role to ensure the fulfilment of treaty obligations, and suggested that this should be given further consideration by the international community and within United Nations forums.

165. Prof. Sivanandan concluded by saying that racism is an obscenity and an absolute which violates all human dignity; it has no grades or variations: racism is racism. Today, it has reached its heights in ethnic cleansing and in the destruction of native peoples and their lands.

166. To propose the extension of national institutions is in many cases to ignore the political context in which they work. There is clearly a spectrum of countries and the possibilities for national institutions are, consequently, different. At one end of the spectrum national institutions are merely political shields for Governments. But even at the democratic end of the spectrum, there is still the danger of complicity, complacency, smugness and the creation of a plethora of bureaucracies which lose touch with the grass-roots realities.

B. Recommendations

167. At the eighth session, held on 23 April 1993, the participants in the meeting adopted the following resolution containing recommendations on the role of national institutions and organizations in combating racism and racial discrimination:

The participants at the meeting of representatives of national institutions and organizations promoting tolerance and harmony and combating racism and racial discrimination,

Having reviewed the development and functioning of national institutions for the promotion and protection of human rights and considered the experience of these institutions and other organizations in combating racism and racial discrimination,

Having also considered the experience of institutions and organizations relating to racism and racial discrimination affecting the rights of indigenous peoples,

Noting relevant resolutions of the General Assembly, the Commission on Human Rights and other relevant United Nations bodies, as well as the conclusions of various regional meetings held preparatory to the World Conference on Human Rights, and the recommendations of previous meetings involving representatives of national institutions for the promotion and protection of human rights,

Welcoming the establishment and development of such institutions in an increasing number of countries,

Reaffirming the fundamental importance of equal respect for and protection of human rights without discrimination on the basis of race, colour, ethnic or national origin, religion, sex, age or other status, including indigenous origin,

Noting with concern, however, that despite two decades dedicated by the United Nations to the elimination of racism, racism and the practice of racial discrimination remain widespread and in some areas have escalated alarmingly, and that some States still tolerate or even participate in racist practices,

Noting also that the increase of racism in many areas is linked to current processes of global change in economic, political and cultural relations, which have in some societies led to crises in political institutions, employment, social structure, cultural and national identity and that such crises express themselves in insecurity and disorientation for some groups and in increasing levels of violence,

Recognizing the need for Member States to scrutinize their institutional structures and policies in order to ensure that they do not perpetuate or cause racism and that they are conducive to good community relations, both at the national and the international level,

Recognizing the important role of non-governmental organizations in combating racism and the practice of racial discrimination,

Convinced that independent national institutions for the promotion and protection of human rights have a major role and responsibility in combating racism and racial discrimination,

Recommend that:

(a) Governments which have not already done so should consider establishing, taking into account the social and cultural conditions of the country, national institutions with specific responsibilities and adequate powers to combat racism and the practice of racial discrimination or, where appropriate, national human rights institutions to promote and protect human rights, which should be particularly empowered to deal with racism and the practice of racial discrimination as part of their mandate;

(b) The independence and the status of national institutions, when established, should be guaranteed by the constitution of the country or by national legislation;

(c) National institutions having general competence regarding the promotion and protection of human rights should ensure that appropriate priority is given in their work to efforts to combat racism and racial discrimination, with particular care being taken to ensure that their functioning is culturally appropriate to the minority and indigenous groups which are victims of discrimination within their country;

(d) In the establishment and development of such national institutions regard should be had to the experience of other nations;

(e) Governments should ensure that such national institutions have adequate and adequately secure resources to enable them to discharge their mandate;

(f) In the establishment, operation and strengthening of national institutions regard should be had to the principles relating to the status of national institutions, contained in the annex to Commission on Human Rights resolution 1992/54 of 3 March 1992, and also to:

(i) The interdependence and indivisibility of human rights and the need for national institutions to have effective jurisdiction regarding racism and racial discrimination affecting human rights of any category, including civil, political, economic, social and cultural rights;

(ii) The need, where a national institution has the power to receive and investigate complaints from individuals/groups, as provided for in the Principles relating to the status of national institutions, for such institutions to provide effective, accessible and, to the extent possible, enforceable remedies in relation to complaints concerning violations of human rights and the need to ensure that such institutions are accessible to individuals and groups in disadvantaged sections of society and in particular those groups which are subjected to racism and racial discrimination;

(iii) The obligation of such institutions to monitor compliance with international human rights instruments, including the effect of racism and racial discrimination on the equal enjoyment of the rights recognized in these instruments;

(g) In countries having an indigenous people or peoples living within their territory, the rights of indigenous peoples should be accorded specific recognition and appropriate priority in the charter and functioning of appropriate national institutions;

(h) National institutions should have adequate freedom and resources to publish and disseminate the results of their inquiries, research and studies and for the promotion of public awareness of human rights, including issues relating to racism and racial discrimination;

(i) Governments and relevant international and regional organizations should recognize that the establishment, operation and development of national institutions is an important and appropriate subject for international cooperation, including by the provision of technical assistance where requested and by facilitating cooperation between national institutions of different countries, including on a regional basis, and between national institutions and relevant United Nations bodies;

(j) National institutions should regularly prepare and publish reports, with appropriate recommendations, on the situation relating to human rights including, where required and necessary, racism and racial discrimination.

168. In addition, representatives of non-governmental organizations and indigenous peoples present at the meeting, prepared and submitted two draft resolutions (annex II).

C. Closure of the meeting

169. The Hon. Robert Tickner MP, Minister for Aboriginal and Torres Strait Islander Affairs of Australia, made a closing statement. Sir Ronald Wilson and Mrs. Irene Moss, co-Chairpersons of the meeting, expressed their thanks to all the participants and to those involved in the organization of the meeting. Mr. Hamid Gaham, representative of the Assistant Secretary-General for Human Rights, summed up the achievements and closed the meeting.

Annex I

LIST OF PARTICIPANTS

A. National Institutions

Human Rights and Equal Opportunity Commission (Australia)
Sir Ronald Wilson, President
Mr. Brian Burdekin, Federal Human Rights Commissioner
Mrs. Irene Moss, Federal Race Discrimination Commissioner

Aboriginal Torres Strait Islander Commission (Australia)
Mr. Sol Bellear, Acting Chairperson

Benin Commission on Human Rights (Benin)
Mr. Saidou Agbantou, Chairman

Canadian Human Rights Commission (Canada)
Mr. John Hucker, Secretary-General

National Committee on Human Rights and Freedom (Cameroon)
Mr. Solomon Nfor Gwei, Chairman

State Nationalities Affairs Commission (China)
Mr. Houdi Yang, Representative
Mr. Jinguang Wu

National Consultative Commission on Human Rights (France)
Mr. Gérard Fellous, Secretary-General

Minority Commission (India)
Mr. Varadarajan, Member

National Commission on Human Rights (Mexico)
Mrs. Graciela Rodríguez, Executive Secretary

Human Rights Commission (New Zealand)
Mrs. Margaret Mulgan, Chief Commissioner

Race Relations Office (New Zealand)
Mr. John Clarke, Race Relations Conciliator

Human Rights Commission (Philippines)
Mr. Sedfrey Ordonez, Chairman

Commission on Human Rights (Russian Federation)
Mr. Serguei Sirotkin, Deputy Head

Human Rights Inquiry Commission (Turkey)
Mr. Tinaz Titiz, Deputy for Ankara, Member

B. Experts

Professor Stephen Castles
Centre for Multicultural Studies (Australia)

Mr. Dumisa Ntsebeza
Black Lawyers Association (South Africa)

Ms. Dalee Sambo
Director, International Union for Circumpolar Health in Alaska
(United States of America)

Professor A. Sivanandan
Institute of Race Relations (United Kingdom of Great Britain and
Northern Ireland)

C. Governments

AUSTRALIA	Mr. Peter Bailey
	Mr. Simon Beckett
	Mr. Al Bita
	Ms. Rosemary Campbell
	Jus. Elizabeth Evatt
	Ms. Neroli Holmes
	Mr. Rodney Inder
	Ms. Mildred Ingram
	Ms. Carolyn Jenkins
	Mr. Dominic Kanak
	Mr. Stepan Kerkyasharian
	Ms. Joanne Lawrence
	Ms. Dawn Lawrie
	Mr. Les Malezer
	Mr. Patrick Malone
	Mr. Rod McDonald
	Ms. Janelle McQueen
	Ms. Vasiliki Nihas
	Mrs. Rosalie O'Neale
	Mr. Roland Rich
	Mr. Philip Ruddock
	Ms. Joann Schmider
	Ms. Debarah Shalla
	Ms. Joan Sheedy
	Ms. Kath Tapperell
	Ms. Josephine Tiddy
	Mr. Uri Themal
	Ms. Maggie Smyth
	Dr. June Verrier
	Mr. Peter Woolcott
	Ms. Mirna Yacoub
AUSTRIA	Mr. Michael Stead
CHILE	Mr. Fernando Perez

CHINA	Mr. Bohua Xie
CROATIA	Dr. Ivan Simonocic
CZECH REPUBLIC	Mrs. Viera Jaresova Mrs. Jara David-Moserova
EGYPT	Mr. Mahmoud Suliman
GERMANY	Mr. Rolf Meyer-Olden Ms. Andrea Rosenauer Dr. Dieter Gescher
HOLY SEE	Fr. Peter Hosking
INDONESIA	Prof. Baharuddin Lopa Mr. H. Supandar Mr. Abdul Wahab
IRAN (ISLAMIC REPUBLIC OF)	Mr. A. Golriz Mr. M. Hamzei
ISRAEL	Ms. Judith Karp
LEBANON	Mr. Sleiman Rassi
JORDAN	Sen. Husni Ayesh
NETHERLANDS	Mr. Fred de Bruin
NORWAY	Ms. Aase Gerba Aasen Ms. Litt Woon Long
PHILIPPINES	Mr. Fernando Santos
ROMANIA	Mr. Platona Pavel
SAMOA	Mr. Tuala Kerslake
SRI LANKA	Mr. Sarath Perera
THAILAND	Mrs. Pantipa Pratoomtip Mrs. Karntimon Ruksakiati
YUGOSLAVIA	Mr. Zoran Veljic

D. Liberation movement

PALESTINE	Mr. Ali Kazak

E. Intergovernmental Organization

INTERNATIONAL ORGANIZATION FOR MIGRATION:	Mr. J.S. Olesen

F. Non-governmental organizations in consultative status with the Economic and Social Council

AMNESTY INTERNATIONAL:	Ms. Nalyni Mohamed
BAHA'I INTERNATIONAL COMMUNITY (AUSTRALIA)	Mr. Graham Nicholson
COMMISSION OF THE CHURCHES ON INTERNATIONAL AFFAIRS OF THE WORLD COUNCIL OF CHURCHES:	Ms. Nancy Shelley
INTERNATIONAL CONFEDERATION OF FREE TRADE UNIONS:	Mr. Alan Matheson
INTERNATIONAL COUNCIL FOR ADULT EDUCATION:	Mrs. Lillian Holt
INTERNATIONAL COUNCIL OF JEWISH WOMEN:	Ms. Lynne Davies Mrs. Agnus Schartz
INTERNATIONAL INDIAN TREATY COUNCIL:	Mr. T. Widders
NATIONAL ABORIGINAL AND ISLANDER LEGAL SERVICE AND SECRETARIAT:	Mr. Simon Blackshield
WORLD FEDERATION OF UNITED NATIONS ASSOCIATIONS, UNITED NATIONS ASSOCIATION OF AUSTRALIA:	Mr. Colston Vowles Mr. Gerard Dupal
WORLD JEWISH CONGRESS:	Mr. Jeremy Jones

G. Other non-governmental organizations

ABORIGINAL AND ISLANDER LEGAL SERVICE, BRISBANE:	Mr. Sam Witson
ABORIGINAL AND ISLANDER COMMISSION:	Mr. Raul Fernandez-Calienes Ms. Anne Pattel-Gray
AUSTRALIAN HELLENIC EDUCATIONAL PROGRESSIVE ASSOCIATION:	Mr. George Kyriazakos
AUSTRALIAN CATHOLIC BISHOPS CONFERENCE:	Dr. Warwick Neville
AUSTRALIAN CATHOLIC SOCIAL JUSTICE COUNCIL:	Mr. Keith O'Neill
AUSTRALIAN CHINESE FORUM:	Dr. Thiam Ang Dr. Rosalind Au-Yong Mr. Edward Lim
AUSTRALIAN NATIONAL UNIVERSITY:	Dr. James Jupp
AUSTRALIAN RED CROSS - VICTORIA:	Ms. Anne-Marie Ryan

BNAI B'RITH COUNCIL OF NSW:	Ms. Elizabeth Einfeld
CAODAIST ASSOCIATION OF AUSTRALIA:	Mr. Chanh-Giao Nguyen
CATHOLIC EDUCATION OFFICE, MELBOURNE:	Ms. Kathy Johnston
CENTRE FOR ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES:	Mr. Adrian Marrie
COUNCIL OF CHURCHES (AUSTRALIA):	Mrs. Hermione Partamian
ETHNIC COMMUNITIES COUNCIL OF NEW SOUTH WALES:	Mrs. Edna McGill
FEDERATION OF ETHNIC COMMUNITIES COUNCIL OF AUSTRALIA:	Ms. Myrtle De Souza
ETHNIC COMMUNITIES COUNCIL OF NEW SOUTH WALES:	Mrs. Josie Lacey
FAMILY PLANNING ASSOCIATION:	Ms. Judy Tonkin
INTERNATIONAL CAMPAIGN FOR TIBET: AUSTRALIAN CAMPAIGN FOR TIBET:	Ms. Lynn Russell
INTERNATIONAL MOVEMENT AGAINST ALL FORMS OF DISCRIMINATION AND RACISM:	Mr. Kim Dong Hoon
KINGSFORD LEGAL CENTRE:	Mr. Simon Rice Mr. P. Battley Mr. J. Godwin
LIVERPOOL MIGRANT RESOURCE CENTRE:	Ms. Jan Kang
MIGRANT RESOURCE CENTRE, ALTONA:	Ms. Irene Nicodemou
MIGRANT RESOURCE CENTRE, FOOTSCRAY:	Ms. Josephine Dyer
MULTICULTURAL CENTRE:	Dr. Christine Inglis Ms. Karen Herne
NEW SOUTH WALES JEWISH BOARD OF DEPUTIES:	Mrs. Judy Shapira
PUBLIC INTEREST ADVOCACY CENTRE:	Ms. Andrea Durbach
REDFERN LEGAL CENTRE:	Mr. Michal Hee Ms. Mandy Elshout
SOUTH-CENTRAL REGION MIGRANT RESOURCE CENTRE:	Mr. Elias Tsigaras
SERVICE FOR THE TREATMENT AND REHABILITATION OF STRUCTURAL AND TRAUMA SURVIVORS (STARTTS):	Ms. Margaret Cunningham
THE SETTLEMENT:	Mr. Tony Morris

UNITED CHURCH IN AUSTRALIA:	Mr. Bill Thomas
UNREPRESENTED NATIONS AND PEOPLES ORGANIZATION (UNPO):	Mrs. Helen Corbett Mr. Mike Forster
VICTORIAN ADULT EDUCATION ASSOCIATION:	Mr. Peter Clarke
WORLD INDIGENOUS PEOPLES' CONFERENCE EDUCATION:	Ms. Nerida Blair Mr. Robert Morgan

H. Institutes and universities

UNIVERSITY OF SOUTH AUSTRALIA:	Mr. David Hollinsworth
UNIVERSITY OF NEW SOUTH WALES:	Dr. Michael Humphrey
UNIVERSITY OF TECHNOLOGY, SYDNEY:	Mr. Jock Collins

I. Dignitaries invited

Hon. Robert Tickner, MP
Minister for Aboriginal and Torres Strait Islander Affairs (Australia)

Hon. Nick Bolkus
Federal Minister for Immigration and Ethnic Affairs (Australia)

Mr. Neil Edwards
Director of the Office of Multicultural Affairs (Australia)

Sen. Margaret Reynolds
Member of the Council for Aboriginal Reconciliation (Australia)

Annex II

A. DRAFT RESOLUTION PRESENTED BY REPRESENTATIVES OF NON-GOVERNMENTAL ORGANIZATIONS

WHEREAS this meeting of the United Nations has been called to focus, primarily, on the role of national institutions in the promotion of tolerance and harmony and in combating racism and racial discrimination and

WHEREAS the role of other organizations, amongst them, the non-governmental organizations, in the promotion of tolerance and harmony and in combatant racism and racial discrimination has also come under intense and critical discussion and evaluation

NOW THEREFORE the United Nations conference gathered at Sydney, Australia on 19-23 April 1993 resolves as follows:

1. THAT national institutions and non-governmental organizations are complementary to each other in carrying out the objectives outlined above, inasmuch as all organizations engaged in the project outlined above should see themselves as part and parcel of a multi-faceted approach towards the attainment of the same objectives.

2. THAT the independence, in all respects, of the non-governmental organizations should be strengthened, not weakened, so that they can play a meaningful role in their interaction with national institutions and other organizations in the endeavour to combat racism and racial discrimination.

3. THAT the capacity of non-governmental organizations in all or more of the following respects should be strengthened:

(a) Their ability to initiate programmes of work and areas of study;

(b) Their ability to act as a check on national institutions and general government inaction, whenever and wherever such become manifest;

(c) Their ability to criticize and challenge governmental programmes or policies which promote racism or intolerance;

(d) Their ability to suggest changes and meaningful alternative programmes;

(e) Their ability to gain access to official information, to investigate cases of human rights abuses, and to gain access to persons in custody.

AND FOR THE ATTAINMENT OF THE ABOVE-MENTIONED AIMS AND OBJECTIVES AND FOR THE PRACTICAL IMPLEMENTATION OF THESE RESOLUTIONS, THIS CONFERENCE RECOMMENDS TO THE WORLD CONFERENCE ON HUMAN RIGHTS (VIENNA, JUNE 1993) as follows:

1. THAT the United Nations should formally recognize the <u>independent</u> role of non-governmental organizations in the struggle against racism and racial discrimination and in the promotion of tolerance and harmony;

2. THAT the United Nations should vote funds for the support of non-governmental organizations throughout the world whose primary and sole responsibility would be to engage in the combat against racism and racial discrimination and the promotion of peace, tolerance and harmony. The primary aim of such funding should be to ensure that the non-governmental organizations maintain their independence from national government;

3. THAT, in any event, whenever the United Nations holds conferences, meetings, and/or any other gatherings where focus is to be on the promotion of harmony and tolerance and the combat against racism and racial discrimination, non-governmental organizations should be invited, with the necessary funding provided, so that they can speak for themselves so that the world community can fully appreciate their role, their hopes and despairs, their criticisms and meaningful suggestions for the way forward in the struggle against racism and racial discrimination.

B. RESOLUTION PRESENTED BY DRAFT REPRESENTATIVES OF INDIGENOUS PEOPLES

Affirming that indigenous peoples, as first peoples and nations, have the right to be different, to consider themselves different and to be recognized and respected as distinct peoples and nations,

Recognizing that indigenous peoples worldwide have suffered from the denial of the right to be different and the denial of recognition as subjects of international law, and from a continuing legacy of subjugation, domination and exploitation and racist attitudes of "superiority", and that such persistent forms of racism and racial discrimination have affected indigenous peoples around the globe, with similar consequences of marginalization and exclusion,

Acknowledging that indigenous peoples continue to live in a state of colonialism, and are victims of ethnocide or cultural genocide,

Rejecting the concept of extinguishment of indigenous peoples' rights which contributes to dispossession, subjugation, dependency and ethnocide,

Calling attention to the individual rights orientation of existing international human rights instruments, and in order to be consistent with the communal and collective nature of indigenous peoples, the distinct collective and individual rights of indigenous peoples must be recognized and respected,

Affirming that all indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, cultural and spiritual development. The right of self-determination must be recognized as a precondition to the exercise and enjoyment of all other fundamental human rights,

Reiterating that the denial of the right of self-determination, the illegal land dispossession and the denial of other fundamental human rights of indigenous peoples continue to contribute to the deterioration of indigenous peoples and nations,

Reaffirming the inherent collective rights of indigenous peoples of lands, territories and resources, and the right of indigenous peoples to a safe and healthy environment.

The inherent rights of indigenous peoples to lands, territories and resources have been systematically ignored, devalued or otherwise violated by Governments, resulting in environmental degradation and exploitation by Governments, corporate interests, international financial institutions and others.

The universality of human rights must be the framework to combat racism and racial discrimination against indigenous peoples, and further noting the inseparable and indivisible nature of human rights.

Recognizing the pervasive institutional, public and informal forms of racism and racial discrimination affecting all aspects of the lives of indigenous peoples.

In recognition of General Assembly resolution 47/75 of 14 December 1992 proclaiming 1993 as the United Nations International Year of the World's Indigenous Peoples, with a view to using this important year as an opportunity to generate greater understanding and awareness of the fundamental human rights, aspirations and concerns of indigenous peoples.

Conscious of the need for the United Nations, States, non-governmental organizations and others to commit themselves to an ongoing programme to combat and end racism and racial discrimination against indigenous peoples,

Demands the Preparatory Committee and the Secretary-General of the World Conference on Human Rights to ensure that the rights and issues pertinent to indigenous peoples be addressed in a substantive and comprehensive fashion within the framework of the Conference, including the direct and meaningful participation of indigenous peoples.

Indigenous peoples are acutely aware of the fact that we are embarking upon the Third Decade to Combat Racism and Racial Discrimination, and the need for the identification of a permanent agenda item and programme of the Third Decade to Combat Racism and Racial Discrimination to deal specifically with indigenous peoples, and to do so in a manner which recognizes the right of indigenous peoples to direct and meaningful participation and based upon the right to self-determination.

Recognizing the conclusions and recommendations of the Seminar on the effects of racism and racial discrimination on the social and economic relations between indigenous peoples and States, Geneva, 16-20 January 1989 (HR/PUB/89/5) and the continuing failure of the full and effective implementation of those specific recommendations,

Acknowledging the positive evolution of minimum international indigenous human rights standards and the need for further elaboration upon such standards which are responsive to indigenous perspectives and aspirations,

Welcoming the increased attention and awareness that has been generated within the United Nations and other international forums to the rights of indigenous peoples and the ongoing efforts to accommodate such rights,

Urging the Working Group on Indigenous Populations to complete its work and the need for direct and meaningful participation of indigenous peoples in the overall United Nations consideration of the draft declaration on the rights of indigenous peoples,

Encourages the full implementation of and further elaboration upon the recommendations contained in chapter 26 of Agenda 21 in the report of the United Nations Conference on Environment and Development (A/CONF.151/26, Vol. III),

Noting the failure of previous strategies and approaches and the lack of accession by States to existing international human rights instruments, there is a need for new and innovative approaches to comprehensively respond to the rights and concerns of indigenous peoples,

Considering that the human rights of indigenous peoples and their interests and concerns are matters that must be dealt with comprehensively and recognized as matters that concern all peoples; further, that the rights of indigenous peoples have political, economic, social, cultural and spiritual dimensions and aspects,

Calling upon Member States, the United Nations itself and others to contribute financial and other resources to facilitate the participation of indigenous peoples in 1993 and all other ongoing United Nations activities related to indigenous peoples, consistent with the priorities and concerns of indigenous peoples,

Recommends:

(a) Accession to existing human rights instruments;

(b) Approval of the draft declaration on the rights of indigenous peoples;

(c) The drafting of a convention on indigenous rights;

(d) Effective and comprehensive means of monitoring indigenous human rights (mechanism);

(e) Training and education programmes in the field of human rights to be held in indigenous communities and also for those persons within the United Nations responsible for matters that affect indigenous peoples and their rights;

(f) Technical and financial assistance;

(g) 1993 as the starting point for a new and innovative approach;

(h) A seminar on indigenous human rights issues to be held in 1994;

(i) Ratification of ILO Convention No. 169;

(j) Human rights assessments;

(k) The establishment of a United Nations commission on indigenous peoples with a permanent status, and of a special rapporteur on the rights of indigenous peoples;

(l) World Conference on Human Rights recommendations;

(m) Improved effectiveness of the United Nations Commission on Human Rights by inclusion of a permanent agenda item relating to (discrimination against) indigenous peoples' rights;

(n) Funding and sending of fact-finding missions to countries where violations of indigenous human rights are reported;

(o) International and national accommodation of the distinct status and rights of indigenous peoples and nations as subjects of international law;

(p) Establishment of indigenous peoples' desks in every major agency of the United Nations, i.e. World Health Organization, Food and Agriculture Organization, International Monetary Fund, World Bank, etc.